

After considering the evidence, Judge Frobish denied the request for temporary total disability benefits. Although he did not make specific findings, the Judge determined that claimant's present medical condition and complaints were the result of the initial injury, which was the subject of docket #210,972, as he awarded claimant's counsel \$625 for post-award attorney fees.

Claimant contends Judge Frobish erred. Claimant argues that the evidence is uncontroverted that she is temporarily and totally disabled. Claimant further argues that because this is a post-award matter, the Appeals Board has the jurisdiction to review the order, reweigh the evidence, and grant benefits. Therefore, claimant requests that temporary total disability benefits be ordered paid from the date of their termination (which claimant believes to be April 14, 2000) until the treating physician releases her to substantial and gainful employment.

The principal issue in this appeal is whether claimant is temporarily and totally disabled. But before the Appeals Board can address that issue, the Board must first determine whether it has jurisdiction over that preliminary hearing finding at this juncture of the claim.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record compiled to date, the Appeals Board finds:

1. The Appeals Board does not have the jurisdiction at this juncture of the proceeding to review the issue of whether claimant meets the definition of temporary total disability. Therefore, this appeal should be dismissed.
2. In construing a specific statute in the Workers Compensation Act, the legislative intent is determined from considering the entire Act.¹
3. The Kansas Supreme Court has held that an important objective of workers compensation law is avoiding cumbersome procedures and technicalities of pleading so that a correct decision may be reached by the shortest and quickest possible route.²
4. The Division of Workers Compensation is not bound by technical rules of procedure but should give the parties reasonable opportunity to be heard and to present evidence, insure an expeditious hearing, and act reasonably and without partiality.³

K.S.A. 44-523 provides in part that the director or court in a workmen's compensation proceeding shall not be bound by technical rules of procedure, and that they shall act reasonably and without partiality. **The fair implication therefrom is that any procedure which is appropriate and**

¹ *McGranahan v. McGough*, 249 Kan. 328, 820 P.2d 403 (1991).

² *Pyeatt v. Roadway Express, Inc.*, 243 Kan. 200, 756 P.2d 438 (1988).

³ K.S.A. 1999 Supp. 44-523(a); *Pyeatt*, *supra*.

not prohibited by the workmen's compensation act may be employed.⁴
(Emphasis added.)

5. The preliminary hearing statute was designed to expediently address issues of medical treatment and temporary total disability compensation.⁵ The preliminary hearing is summary in nature⁶ and evidentiary rules are relaxed, which aids in the prompt resolution of the issues.⁷

6. The need for an expedient resolution of the issues regarding temporary total disability benefits is just as compelling following an award as it is before an award. In fact, the Workers Compensation Act specifically provides that preliminary hearings may be held post-award while an award is on appeal.⁸

7. The Appeals Board has held on numerous occasions that the preliminary hearing procedure could be used following an award. The 2000 legislature enacted a specific procedure for post-award requests for medical treatment, but that amendment did not address post-award requests for temporary total disability benefits.⁹

8. Recognizing the need for the expedient resolution of the issues surrounding temporary total disability benefits, the Appeals Board will continue to interpret the Workers Compensation Act to allow the parties to litigate post-award requests for temporary total disability benefits as a preliminary hearing matter.

When a post-award preliminary hearing for temporary total disability benefits is held and a preliminary hearing order issued, the parties may request, if needed, a full hearing and final order on those issues. When submitting evidence for a final order, the more strict evidentiary rules apply and the parties may be required to submit their evidence by deposition, if they cannot otherwise agree.

Under that procedure, the post-award preliminary hearing orders are reviewable as any other preliminary hearing order. But the final orders that are issued are subject to de novo review by the Appeals Board, which is then subject to appellate court review.

⁴ *Bushey v. Plastic Fabricating Co.*, 213 Kan. 121, syl. 1, 515 P.2d 735 (1973).

⁵ K.S.A. 1999 Supp. 44-534a(a)(1).

⁶ K.S.A. 1999 Supp. 44-534a(a)(2).

⁷ K.A.R. 51-3-5a.

⁸ K.S.A. 1999 Supp. 44-551(b)(2)(C) and K.S.A. 1999 Supp. 44-556(g).

⁹ 2000 Kan. Sess. Laws Ch. 160, New Section 4.

9. Because this is an appeal from a preliminary hearing order, not every alleged error in law or in fact is reviewable. The Board's jurisdiction to review preliminary hearing orders is generally limited to the following issues, which are deemed jurisdictional:¹⁰

- (1) Did the worker sustain an accidental injury?
- (2) Did the injury arise out of and in the course of employment?
- (3) Did the worker provide both timely notice and written claim of the accidental injury?
- (4) Is there any defense that goes to the compensability of the claim?

Additionally, the Appeals Board may review any preliminary hearing order where a judge exceeds his or her jurisdiction.¹¹

Workers compensation judges have the jurisdiction at preliminary hearings to determine if an individual meets the definition of temporary total disability.¹² The judge has the power and jurisdiction to decide that question rightly or wrongly.

Jurisdiction is defined as the power of a court to hear and decide a matter. The test of jurisdiction is not a correct decision but a right to enter upon inquiry and make a decision. Jurisdiction is not limited to the power to decide a case rightly, but includes the power to decide it wrongly.¹³

10. Because the appeal does not raise a jurisdictional issue, the Appeals Board cannot review the August 8, 2000 Order at this time.

WHEREFORE, the Appeals Board dismisses claimant's appeal leaving the August 8, 2000 Order entered by Judge Frobish in full force and effect.

IT IS SO ORDERED.

¹⁰ K.S.A. 1999 Supp. 44-534a.

¹¹ K.S.A. 1999 Supp. 44-551.

¹² K.S.A. 1999 Supp. 44-534a(a)(2).

¹³ *Allen v. Craig*, 1 Kan. App. 2d 301, 303-304, 564 P.2d 552, rev. denied 221 Kan. 757 (1977).

Dated this ____ day of October 2000.

BOARD MEMBER

c: Roger A. Riedmiller, Wichita, KS
Leigh C. Hudson, Fort Scott, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director